IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1311 of 2002

And

FIRST APPEAL No 1312 & 1313 of 2002
With
CIVIL APPLICATION NO. 4521, 4522 AND 4523
And
X-OBJECTION NO. 13, 14 AND 15 OF 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

EXECUTIVE ENGINEER

Versus

PARSOTTAMBHAI MAGANBHAI

Appearance:

1. First Appeal No. 1311, 1312 and 1313 of 2002

MR AD OZA for Petitioner No. 1

MR SN SINHA for Respondent No. 1

MR. KP RAWAL, LD. AGP for Respondent No. 2

2. Civil Application No. 4521, 4522 and 4523 of 2002
MR AD OZA for Applicant
MR SN SINHA for Respondents-Claimants
MR KP RAWAL, LD. AGP for Spl.LA. Officer

3. X-Objection No. 13, 14 and 15 of 2003
MR. SN SINHA for Claimants
MR. A.D. OZA for Ex.engineer
MR. KP RAWAL, LD. AGP for Spl. L.A. Officer.

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 19/11/2003

COMMON ORAL JUDGEMENT
(Per : HON'BLE MR.JUSTICE D.P.BUCH)

1 . The above named appellants have preferred these appeals under section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Code of Civil Procedure, 1908, in order to challenge the judgment & award dated 5-11-1999 rendered by Learned 2nd Extra Assistant Judge & Special Judge (LAR) Ahmedabad (Rural) at Ahmedabad in Land Reference Case Nos. 369, 372 and 523 of 1991 under which Learned Judge of the Reference Court has held that the claimants-respondents would be entitled to additional amount of compensation at the rate of Rs.50-00 per sq. meter, over & above the amount of compensation determined by the Land Acquisition Officer at the rate of Rs.4-00 per sq. meter vide award dated 21-4-1989.

2. These three appeals were notified for admission hearing before the Division Bench comprising of Hon'ble Mr. Justice R.K. Abichandani and Hon'ble Mr. Justice M.C. Patel on July 05, 2002 and the following order was passed by the said Bench.

" It is stated by the learned counsel for the appellants that the appeals raising identical points being First Appeal Nos. 6266 to 6275 of 1999 have been admitted by this Court on 27-10-1999. All these appeals are therefore admitted and ordered to be heard with the aforesaid first appeals. "

3. The Executive Engineer, Narmada Project, Unit No.3, Ahmedabad, had sent a proposal to the Government to initiate necessary procedure for acquiring lands of village Sughad, Taluka & District Gandhinagar for Narmada Main Canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of the Sughad village were likely to be needed for the said public purpose. Therefore a notification under section 4 (1) of the said Act was issued, which was published in the Government Gazette on December 13, 1985. The owners of the land had opposed said acquisition. After considering their objections the Special Land Acquisition Officer had submitted his report to the State Government as contemplated by section 5A(2) of the said Act. On considering the same, the State Government was satisfied that said lands at village Sughad which were specified in the notification published under section 4(1) of the said Act on 13-12-1985, as aforesaid, were needed for the public purpose of Narmada Main Canal. Therefore declaration under Section 6 of the said Act was made which was published in the Official Gazette on 31-3-1987. Thereafter the claimants were served with notice under Section 9 of the said Act for determination of compensation. Having regard to the nature of the evidence produced before him and the development which had taken place near the lands so acquired, the Special Land Acquisition Officer offered compensation at Rs.4-00 per sq. meter by award dated 21-4-1989. The claimants felt that the compensation awarded was inadequate, therefore they had submitted applications under Section 18 of the said Act requiring the Special Land Acquisition Officer to refer the said matters to District Court for determination of appropriate compensation. Accordingly references were made to the District Court, Ahmedabad (Rural) which were registered as Land Acquisition Case No. 369, 372 and 523 of 1991 respectively. The claimants in the said references had submitted their case that they were taking 3 crops in a year and as they were deriving income of Rs.15,000- to Rs.18,000/- per wigha in a year and therefore, they were entitled to compensation at the rate of Rs.100/- per sq. meter. The reference applications were opposed by the present appellants by filing written statement, wherein it was stated that, the compensation payable to the claimants was determined after taking into consideration all relevant facts such as income derived by the claimants from sale of agricultural produce, development which had taken place near the lands so acquired etc. and therefore the reference applications should be dismissed.

4. On the aforesaid pleadings, necessary issues were

framed by the Reference Court at exhibit-16/1. On behalf of the claimants one Maheshbhai Nathalal Patel was examined at Exhibit 35, who had given particulars about the situation of the lands acquired as well as income derived by the claimants from sale of agricultural produce and notifications issued by the Government under Sections 4 & 6 of the Act, etc. The claimants had produced (i) copies of Village Form No. 7, 7/A and 12 at Exhibits 21 to 29, (ii) a copy of the judgment dated April 20, 1998 rendered in Land Acquisition Reference Nos. 393 of 1991, 394 of 1991, 546, 549 & 669 of 1991 by the learned 3rd Extra Assistant Judge, Ahmedabad (Rural) at Exhibit 30, indicating that the Reference Court had awarded compensation at the rate of Rs.53-00 per sq. meter to the claimants whose lands situated in village Nabhoi, Taluka & District Gandhinagar were acquired with reference to Section 4(1) notification dated December 3, 1985, (iii) a copy of order passed by Talati-cum-Mantri, Chandkheda, pursuant to order of the District Collector, Gandhinagar, dated May 30, 1988 allotting lands from Survey Nos. 647 & 648 of village Chandkheda for O.N.G.C. Ahmedabad Project at the rate of Rs.112-00 per sq. meter at Exhibit-31, (iv) a copy of award rendered by the Special Land Acquisition Officer, O.N.G.C. Ahmedabad, dated June 18, 1990 determining market value of the lands acquired from village Chandkheda and village Zundal at the rate of Rs.47-00 per sq. meter at Exhibit-32, (v) a copy of map of village Sughad at Exhibit-33, (vi) a copy of base map of "AUDA" at Exhibit-34, (vii) a copy of judgment of the Reference Court in Land Acquisition Case Nos. 364 of 1991, 527, 528 and 530 of 1991 dated February 24, 1999 rendered by the learned 3rd Extra Assistant Judge & Special Judge [LAR], Ahmedabad (Rural), determining market value of lands of village Sughad at the rate of Rs.54-00 per sq. meter with reference to publication of notification under Section 4(1) of the Act in official gazette on December 13, 1985 at Exhibit-61, (viii) a copy of judgment dated December 9, 1998 rendered by the learned 3rd Extra Assistant Judge, Ahmedabad (Rural) in Land Acquisition Case Nos. 401 of 1994 to 420 of 1994 determining market value of the lands of village Chandkheda at the rate of Rs.210-00 per sq. meter with reference to publication of notification issued under Section 4(1) of the Act in the official gazette on September 15, 1992 at Exhibit-62, (ix) a copy of judgment of the Reference Court dated February 2, 1984 rendered by the learned Extra Assistant Judge, Narol, in Land Acquisition Case Nos. 126 of 1982 to 132 of 1982 determining market value of the lands of village Motera at the rate of Rs.20-00 per sq.meter at Exhibit-63, and (x) a copy of judgment of the High Court dated December

27, 1985 in First Appeal Nos. 1838 of 1984 to 1841 of 1984 by which the award produced at Exhibit-63 was modified holding that the claimants were entitled to compensation at the rate of Rs.35-00 per sq. meter at Exhibit-64 etc.

5. It appears that the Reference Court had recorded common evidence in all the References and therefore the witness is common and even documents have been exhibited as common pieces of evidence with respect to all the References which were heard & decided together by way of common judgment & award by the Reference Court.

6. So far the present appellants are concerned, no witness was separately examined but certain documents like copies of Village Form No.7, 7/A and 12; true copies of registered sale deeds etc. were produced on record of the Reference Court.

7. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that Exhibit-61, which was previous award of the Reference Court relating to lands of this very village, i.e. village Sughad, was relevant. The reference Court also considered other materials for the purpose of determining market value of the lands acquired in instant cases because; (i) the date of publication of notification under Sectin 4 (1) of the Act in the official gazette was the same in both the cases and (ii) that the lands were adjoining to one other. The Reference Court deduced that the previous awards relating to the lands situated in other villages were not relevant when the award relating to the lands acquired from this very village was available for determining market value.

8. On the appreciation of the aforesaid materials and on appreciation of the arguments advanced by the learned advocates for the rival parties, the Reference Court decided that the compensation offered and awarded by the Special Land Acquisition Officer was not adequate and therefore the said amount was required to be enhanced. Accordingly the Reference Court enhanced the said amount and decided that the claimants were entitled to additional compensation at Rs.50-00 per sq. meter. In other words the total amount of compensation was found to be Rs.54-00 per sq.meter, including the amount awarded by the Special Land Acquisition Officer.

9. Feeling aggrieved by the said judgment & awards of the Reference Court, the appellants have preferred the present appeals before this Court.

It has been mainly contended in these appeals that the Reference Court has not properly appreciated the evidence on record and the material placed before the Reference Court by the parties, and therefore the judgments & awards are illegal and erroneous and deserve to be set aside. The appellants therefore have prayed to allow these appeals and to set aside the aforesaid judgments & awards of the Reference Court.

10. On hearing these appeals, they were admitted as aforesaid, and in response to the service of notice of admission, Mr. S.N. Sinha, learned advocate has appeared on behalf of respondents - claimants in all the three matters, whereas Mr. K.P. Rawal, learned AGP has appeared on behalf of the State Government in all the three matters.

11. We have gone through the record & proceedings of the Reference Court. It has been incidentally mentioned at the Bar that earlier this Court was required to deal with and decide First Appeal No. 1310, 1314 and 1315 of 2002 arising from the aforesaid award and after appreciation of evidence on record, this Court had pronounced its judgment on 31-7-2003. While so pronouncing the judgment, (Coram : Hon'ble Mr. Justice J.M. Panchal & Hon'ble Mr.Justice Sharad D. Dave) this Court had found that the additional compensation awarded at Rs.50-00 per sq.meter was not proper and therefore the additional amount of compensation was fixed at Rs.49-00 per sq. meter, and the appeals were therefore allowed partly and awards of the Reference Court were modified as aforesaid.

12. Learned advocates appearing for the parties before this Court have submitted that the earlier appeals arose from the same judgment & awards of the Reference Court and these appeals have also been filed against the same set of judgments & awards of the same Reference Court. They have also agreed that the lands are adjoining to one another and therefore, the compensation awarded in the earlier matters will have direct impact on the facts & circumstances of the present appeals also. Learned advocates have also agreed that in view of the aforesaid judgment of this Court in First Appeal No. 1310, 1314 and 1315 of 2002 this Court may follow the same and decide the compensation in terms of the judgment of this Court in aforesaid three appeals.

13. A copy of the said judgment in the aforesaid three appeals has been shown to us and on going through

the said judgment of this Court, it is found that the lands are adjoining to one another and the Special Land Acquisition Officer has passed a common award with respect to all the lands covered by the earlier appeals and also covering present three appeals. The references were made simultaneously to the Collector, the Collector had simultaneously forwarded the references to the Reference Court and the Reference Court has disposed of all the six matters by way of a common judgment & award. Therefore it is not much in dispute that the judgment of this Court dated 31-7-2003 in the aforesaid three appeals has direct impact on the present three appeals also.

14. In above view of the matter, we follow the principle laid down in the earlier three appeals, and we also hold that the Reference Court ought to have fixed additional amount of compensation at Rs.49-00 per sq. meter and not Rs.50-00 per sq.meter.

15. On going through the aforesaid judgment, it is clear that, while deciding the said matters, this Court had considered another previous judgment of this Court and therefore, considering the previous judgment as well as the aforesaid judgment dated 31-7-2003, we are of the view that the Reference Court ought to have fixed the amount of compensation at Rs.49-00 per sq.meter instead of at Rs.50-00 per sq.meter. In other words the respondent claimants in each of the appeals will be entitled to total amount of compensation at Rs.53-00 per sq. meter and not Rs.54-00 per sq. meter.

16. At this juncture, our attention has been drawn to the fact that the contesting respondents-claimants have filed Cross Objections for enhancement of compensation. However it is found that in the earlier three matters also such cross-objections were filed but were not allowed, and therefore in the present case learned advocate for the contesting respondents makes a statement that, in view of the earlier judgment, the contesting respondents do not press the said cross-objections. Therefore the Cross Objection No. 13, 14 and 15 of 2003 filed in all the three appeals are required to be dismissed. Cross Objection No. 13, 14 and 15 of 2003 are accordingly dismissed.

17. In above view of the matter, the present appeals are ordered to be partly allowed, for the reasons stated above and for the reasons recorded in the judgment dated 31-7-2003 in First Appeal No. 1310, 1314 and 1315 of 2002. It is held that the respondents-claimants shall be entitled to the total compensation at the rate of

Rs.53-00 per sq. meter and not at Rs.54-00 sq. meter as held by the Reference Court, meaning thereby that the respondent in each appeal shall be entitled to additional amount of compensation at the rate of Rs.49/- per sq. mtr. and not at the rate of Rs.50/- per sq. mtr., over and above the amount of compensation awarded by the Special Land Acquisition Officer.

18. It is further held that the respondents-claimants would be entitled to interest on the amount which may be found payable to them under Section 23 (1-A) and Section 23 (2) of the said Act. The Cross Objections filed by the respondents-original claimants are dismissed as not pressed. There shall be no order as to costs. The Office is directed to draw the awards in terms of this judgment.

19. As the First Appeals are disposed of, Civil Application No. 4521 of 2002 in First Appeal No. 1311 of 2002, Civil Application No. 4522 in First Appeal No. 1312 of 2002 and Civil Application No. 4523 in First Appeal No. 1313 of 2002 for interim relief during pendency of these three appeals do not survive, therefore said civil applications are dismissed. Rule discharged in these civil applications. There shall be no order as to costs.

20. Office is directed to keep a copy of this judgment in each of the appeals.

Dt: 19-11-2003 (N.G. NANDI, J)

(D.P. BUCH, J)

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